

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

74-1337

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United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 74-1337

UNITED STATES OF AMERICA,

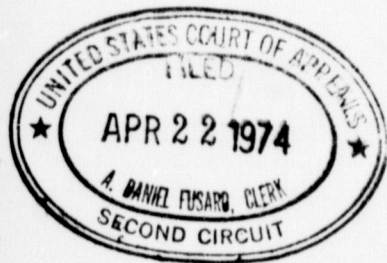
Appellee,

—v.—

CARMINE J. PERSICO, JR.,

Appellant.

APPELLANT'S APPENDIX



LENEFSKY, GALLINA, MASS & HOFFMAN
Attorneys for Defendant-Appellant
30 Broad Street
New York, N. Y. 10004
212-944-1550

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I am now (Out of the hearing of the Jury.)

J O S E P H L O U I S C A N C E L L I,

called as a witness, having been first
duly sworn, testified as follows:

THE COURT: Mr. Cancelli, you
were asked before the Jury came in for a
preliminary question.

In connection with your testimony,
counsel for certain of the defendants want
to know what your address is.

Do you object to disclosing your
address?

THE WITNESS: Yes.

THE COURT: On what ground?

THE WITNESS: For personal reasons.

THE COURT: Well, how do you mean?

Personal reasons of what sort?

THE WITNESS: Well, your Honor, I
do not want to be here in the first place.

I am only here because I was subpoenaed.

I do not want to give my address.

THE COURT: Is it for any personal
reason connected with what?

THE WITNESS: Well, I just want --

McCabe 11

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I just don't want to give it for my family.

THE COURT: Any questions, gentlemen?

MR. EDELSAUM: No, I have no questions, your Honor.

MR. WOERHEIDE: I did not hear the last statement.

Would you read it, please?

(Record read.)

MR. WOERHEIDE: Is that for reasons of fear?

MR. ROSNER: I object to that, your Honor.

Why doesn't he take the stand and testify?

MRS. WOLFF: I object, your Honor.

THE COURT: Because I won't let him.

MR. ROSNER: Well, he is doing it.

MR. LEWIS: That is as good a reason as any.

MR. ROSNER: You are right, Judge, and you shouldn't let him ask a question like that, for the same reason.

THE COURT: I am sorry, Mr. Rosner,

Cancelli

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3 if you disagree, but I think you ought to
4 do it in a more orthodox form.

5 MRS. WOLFF: Your Honor, then I
6 suggest that, I move that the Government
7 dispense with this witness because we are
8 entitled to know something about the witness.

9 We are entitled to know his address,
10 where he is employed and my defendant is
11 entitled to confrontation.

12 My defendant is entitled to know
13 the background of this man and I definitely
14 move that he should not be given an oppor-
15 tunity to testify in this Court, and if he
16 does testify, sir, I move for a withdrawal
17 of the Juror and declaration of a mistrial.

18 THE COURT: Well, we haven't quite
19 finished, but I think that states all of the
20 points and that can be adopted in the form
21 of a motion in advance on behalf of each
22 defendant in a moment or two.

23 MR. LEWIS: Except one other,
24 Judge.

25 I am very concerned now with the
gentlemen of the Press being here, I am

Cancelli

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2 concerned with the inference that will
3 appear in the newspapers tomorrow. It is
4 going to heap error upon error and prejudice
5 upon prejudice, because God knows what that
6 Jury will say after they read it.

7
8 May I say this for the record,
9 sir, one of the Jurors, even though you
10 admonish them not to read the newspapers,
11 was walking through the park reading the
12 New York Times -- Mr. Anderson -- and when
13 they got to the Court threw away the New
14 York Times.

15 That is how far your Honor's
16 admonition goes.

17 That is what is going to happen
18 when they read this tomorrow morning and
19 then he makes that remark about my family,
20 with an inference to be drawn that there
21 must be violence attached.

22 How can a defendant get a fair
23 trial?

24 THE COURT: Well, I would assume
25 that the Press would understand that things
testified to out of the presence of the Jury

1
2 are testified out of the presence of the
3 Jury so that Jurors won't know them, and
4 that they would not publish them if they
5 understood that and gave attention to it,
6 as they would button-hole the Jurors and
7 tell them what had happened out of their
8 presence, which of course they would not do.

9 Now, the witness I am satisfied
10 is not insincere in his statements and he
11 may testify.

12 Bring in the Jury.

13 MR. ROSEN: Your Honor, may I
14 object on the grounds that I submit no proper
15 showing has been made to justify curtailing
16 the defendant's right of cross examination
17 in this case.

18 All this witness has said is that
19 he refuses to testify for personal reasons
20 and then he mentions his family.

21 Without anything further on the
22 record, your Honor --

23 THE COURT: Those were his words.
24 You are quite right.

25 MR. ROSEN: I do not believe under

Cancelli

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3 any case that I know of, read in the light
4 most favorable to the Government, that this
5 can justify this witness testifying without
6 fully developing his present address, back-
7 ground, etc.

8 If we are denied this, if this is
9 the case, he should not be sworn and not
10 permitted to testify at all.

11 MR. KASANOF: In behalf of Albanese
12 may I adopt all of what counsel has stated,

13 THE COURT: Including Mrs.
14 Wolff's motion?

15 MR. KASANOF: Yes.

16 MR. EDELBAUM: Yes, your Honor.
17 (Jury entered the Courtroom.)
18
19

* * *

JOSEPH LOUIS CANCELDI,

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. ORNSTEIN:

Q Could you state your name, please?

A Joseph Louis Cancelli.

Q Mr. Cancelli, in November of 1959, were you arrested by the New York State Troopers?

A Yes, Sir.

MR. ROSENER: I object to the form of the question.

THE COURT: Overruled.

MRS. WOLFF: I object as to the time, your Honor, because it is not involving --

THE COURT: Yes, the objection is overruled.

MRS. WOLFF: -- not involving the
change here.

Q Do you know an individual by the name of Ralph Spero?

A Yes, sir.

Q Do you see him in this Courtroom?

1
2 A Yes, sir.

3 Q Would you point him out?

4 A The second man sitting there.

5 Q When did you see this individual
6 Ralph Spero for the first time?

7 A October 1959.

8 Q Do you recall where you saw him
9 for the first time?

10 A Ellenville, New York.

11 Q And did you see him at a particular
12 place in Ellenville, New York?

13 A Yes, at a summer resort place at my uncle's.

14 Q What is your uncle's name?

15 A Paul Imperella.

16 Q You say he has a summer place in
17 New York?

18 A Yes, he lives there all year round.

19 Q Were you living there at that
20 time?

21 A Yes, sir.

22 Q With whom were you living?

23 A With my uncle and my family there.

24 Q And you say that is the time you
25 met Mr. Spero?

Cancelli - direct

3202

2 A Yes.

3 Q Was Mr. Spero living there at
4 that time?

5 A Yes.

6 Q And for approximately how long a
7 period of time was he living there?

8 A Around two months, I guess.

9 Q Now, Mr. Cancelli, were you
10 present during any conversation between yourself,
11 your uncle and Mr. Spero relating to a car?

12 A Yes, sir.

13 Q And besides yourself, Mr. Spero
14 and your uncle, was anybody else present?

15 A Yes, his brother, Tom Spero.

16 Q Would you tell us what this con-
17 versation was pertaining to the car?

18 MR. EDELBAUM: That is objected
19 to.

20 MR. KASANOF: Objection.

21 MR. ROSNER: Objection.

22 MR. Edelbaum: It is objected to
23 as in no way connected with the defendant
24 Persico, that I represent.

25 This conversation would be hearsay

Cancelli - direct

3203

as to them.

MR. ROSNER: Same objection with respect to the defendant McIntosh.

MR. KASANOF: Same objection with respect to the defendant Albanese.

MR. LEWIS: And I object as to the same order.

THE-COURT: Now, as to the defendants other than Mr. Ralph Spero, this you will see is many months after the alleged hijacking and would not be within the so-called, or if it does exist, plan with which we are dealing, that dates back to July 27 and 28, if you accept that testimony which you heard earlier.

This is not anything which is said to have occurred in the presence of any defendant other than the defendant Spero, and so, it would not connect anyone except him, with the words then spoken.

Now, Mrs. Wolff?

MRS. WOLFF: Yes, your Honor?

I object to it on the ground that it is many months after the charge that we

Cancelli - direct

3204

are trying today and that therefore it is not within the purview of the indictment.

I believe it to be inadmissible.

THE COURT: Yes, but evidence can come at anytime after the event and the reason why it can be testified to is not because it is any part of the alleged offense, but because it involves Mr. Spero's acts or words and they may be received against Mr. Spero, if relevant to our case, which we will now find.

MR. ORNSTEIN: May I have the last question read back?

(Record read.)

A Well, we were living up the country and we didn't have any transportation.

Mr. Spero offered to give us his car, which he had in Brooklyn and which we made arrangements to go and pick it up.

Q Did anyone say anything about the registration of the car?

MR. ROSNER: I object to this as leading.

MRS. WOLFF: Objection.

Cancelli - direct

3205

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2
3 THE COURT: It does not suggest
4 the answer to him and the objection is
5 overruled.

6 Was anything said about it?

7 THE WITNESS: No, we would just
8 have to re-register the car after we got
9 it.

10 Q Who would have to re-register the
11 car?

12 A We were going to re-register the car our-
13 selves.

14 Q When you say we, whom do you mean?

15 A My uncle.

16 Q Did there come a time when you
17 went to pick the car up?

18 A Yes.

19 Q Did you go with anyone else?

20 A Yes, Thomas Spero.

21 MRS. WOLFF: Objection, your
22 Honor. It is not in the presence of the
23 defendant Ralph Spero.

24 THE COURT: That is right, but the
25 objection is overruled.

Q Where did you go to pick this car up?

Cancelli - direct

3206

1
2 A Brooklyn.

3 Q Do you recall where in Brooklyn
4 you went to?

5 A Around 85th Street.

6 Q And was this to a --

7 THE COURT: Well, where?

8 THE WITNESS: To Thomas Spero's
9 home.

10 Q And when you got to Thomas Spero's
11 home, did you see the car?

12 A Yes, the car was in the back.

13 Q And what kind of a car was this?

14 A A 1953 Nash.

15 Q Do you recall the color of the
16 car?

17 A Red and black.

18 Q And you say this car was parked
19 in the back of the house?

20 A Yes, sir.

21 Q How many days were you in
22 Brooklyn?

23 A Two days.

24 Q Do you recall when you left
25 Ellenville, approximately?

Cancelli - direct

3207

What day of the week, approximately?

A Friday night, late Friday night.

Q And when did you begin your return to Ellenville?

A Early Monday morning.

Q And on your return to Ellenville, you were driving the car which you picked up in Brooklyn.

Is that correct, sir?

A Yes.

Q Can you give us the date when you picked this car up?

A Well, just before Thanksgiving, around November, the beginning of November.

Q Did anything occur to you on your trip back to Ellenville, New York?

A Yes, the car broke down.

Q Would you describe to us what happened when the car broke down?

A Well, the car broke down on Route 52 coming back, and I was broken down in front of this restaurant, a Tavern, around 5:00 o'clock in the morning, I guess; and a State Trooper came along to stop to assist me. He gave me a push with his car to get it started.

Cancelli - direct

3208

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2 When we went down the road a little bit, he
3 pulled me to the side and asked for the registration.

4 I told him we just got the car and we were
5 going to transfer it over. He looked at the registra-
6 tion and it did not match the license plates.

7 One of the officers stood with me while
8 the other officer called on the radio. Then he came
9 back and told me that the car had stolen license
10 plates on it and they looked me up.

11 MRS. WOLFF: I object to this as
12 being hearsay and not binding on the de-
13 fendant Spero.

14 THE COURT: Yes.

15 What Mr. Cancelli has told you
16 would not be necessarily true, that the
17 plates that were on the car were in fact
18 stolen plates. All it shows is that is
19 what the State Trooper said to him and the
20 occasion of his being arrested.

21 Whether they were not stolen plates
22 has not been established and is not
23 established by this testimony.

24 Q Mr. Cancelli, when you first saw
25 the car in Brooklyn, did the car have license plates

Cancelli - direct

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on it?

A Yes.

Q Do you recall the number of the license plates?

A No, sir.

Q Mr. Cancelli, you testified that you showed the State Trooper a registration?

A Yes, sir.

Q Where did you obtain this registration from?

A In the glove compartment of the car.

Q Was this a complete registration?

A No, it was a half, a half registration, I think.

THE COURT: It was what?

THE WITNESS: A half a registration.

Q You say this occurred about 5:00 o'clock in the morning?

A Yes, around 5:00 o'clock.

Q Did you notice the name on the registration?

A No, sir.

Q Now, you say you were placed under arrest by the State Troopers?

1
2 A Yes, sir.

3 Q After you were arrested, where
4 were you taken?

5 A State Trooper Barracks in Newburgh.

6 Q After you were taken to the
7 State Trooper Barracks were you taken anywhere else?

8 A Yes, to a Judge's home in Newburgh.

9 Q And what was the outcome of that
10 arrest?

11 MR. ROSNER: Objection, your
12 Honor.

13 THE COURT: Is that material, Mr.
14 Ornstein?

15 MR. ORNSTEIN: Yes, your Honor,
16 it is.

17 This will be connected at a later
18 point.

19 MR. ROSNER: This is all hearsay.

20 THE COURT: No.

21 The man who is arrested and has a
22 law suit, that is not hearsay.

23 MR. ROSNER: Conduct can be hearsay
24 as well as --

25 THE COURT: Yes, not in this case.

Cancelli - direct

3211

Q Mr. Cancelli, were you convicted
of traffic violations --

MR. ROSNER: Objection to the
form.

THE COURT: Yes.

Q Did you have an occasion sometime
after this arrest to speak to Ralph Spero?

A Yes.

Q Do you recall approximately when
this occurred?

A Just before Christmas.

Q And do you recall where this
conversation took place?

A Yes, sir, in a club.

Q Do you recall where that club is
located?

A On Union Street and Novins.

• • •

(Continued on next page.)

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Q And you saw Ralph Spero there?

3

A Yes, sir.

4

Q How did you know that he would be there?

5

A Well, he told me before he left the country
6 he was always there.

7

Q You went to this club. Did you see

8

Ralph Spero when you arrived at the club?

9

A Yes. Not at first --

10

Q And did you have a conversation with

11

him?

12

A Yes.

13

Q Would you tell us what he said to

14

you and what you said to him?

15

MR. EDELBAUM: Same objection,

16

your Honor.

17

MRS. WOLFF: Objection, your Honor.

18

THE COURT: Yes. Now, this does not

19

extend to anyone other than Mr. Ralph Spero.

20

Q Would you tell us what you said to

21

him and what he said to you?

22

A I says, "Thanks for giving me a car that
23 got me locked up." And he said he was sorry.

24

Q Do you know the defendant Carmine

25

Persico, Jr.?

Cancelli - Direct

A Yes, I seen him one time, sir.

Q Is he in this Courtroom?

A Yes, sir.

Q Can you point him out, please?

A The first man sitting there.

Q Did you see Mr. Persico on the evening you had this discussion with Mr. Spero?

A Yes, sir..

Q Was anyone else present during this conversation with Mr. Spero?

A Yes, a friend of mine that was with me.

Q And did there come a time when you were joined by other parties to this conversation?

A Yes, sir, this one time.

Q Who joined this conversation, sir?

A Mr. What-his-name, Mr. Persico.

Q And did Mr. Persico say anything to Mr. Spero in your presence?

A Yes, he gave him hell for giving me that car with the license plates on it.

Q Do you recall what Mr. Persico said?

MR. ROSNER: Judge, I object to this.

MR. KASANOV: Same objection.

THE COURT: Yes. This then would be

Cancelli - Direct

3214

related only to those who are present and participants in the conversation, which as the witness has told it to us would be Mr. Spero and Mr. Persico.

Q Sir, would you tell us what Mr. Persico said?

A He said, "You were stupid in giving him that car with those license plates."

Q What happened after that, if anything?

A Well, we had a drink and I left.

MR. OSHSTEIN: Thank you, Mr. Cancelli.

MR. EDELBaum: May I proceed, your Honor.

THE COURT: What's that, sir?

MR. EDELBaum: May I proceed?

THE COURT: Yes.

CROSS EXAMINATION

BY MR. EDELBaum:

Q Mr. Cancelli, when you were in this club you complained to Mr. Spero quite loudly about him giving you a car with stolen license plates, is that right?

A Yes, sir.

Q And Mr. Persico said to him that was a very

Cancelli - Cross

3215

1 stupid thing for him to do after he heard what you
2 said, isn't that right?
3

4 A Yes. That's possible.

5 MR. EDELBAUM: No further questions.
6 Thank you.

7 Q Oh, just one other question: Did
8 you testify at the first trial of this case?

9 A Yes, sir. -

10 Q The first trial?

11 A Four years ago.

12 Q Well, that was the fourth trial?

13 A Well --

14 Q That was the first time you testified
15 in the Courtroom, was four years ago --

16 A Yes.

17 Q (Continuing) -- in this case? You
18 didn't testify at the other three trials, did you?

19 A No, sir.

20 MR. EDELBAUM: I have no further
21 questions. Thank you.

22 CROSS EXAMINATION

23 BY MRS. WOLFF:

24 Q Mr. Cancelli, when were you first
25 interviewed about this case?

1
2 A Four years ago.

3 Q Did you make any statement, give
4 any statement to anyone about this case?

5 A I don't understand the question.

6 Q Was the interview reduced to writing
7 by anyone?

8 A Yes, Ma'am.

9 Q Who interviewed you?

10 A Officer -- what's his name -- by Bartells.

11 Q Have you ever been convicted of a
12 crime?

13 A No, Ma'am.

14 Q Have you been wanted by the Police?

15 A No, Ma'am.

16 Q Have you ever been treated for a mental
17 illness?

18 A No, Ma'am.

19 Q You say that you went to Brooklyn
20 sometime around Thanksgiving?

21 A That's right, just before Thanksgiving.

22 Q In the last trial, the only trial
23 that you appeared, didn't you state that it was
24 sometime around December?

25 A No, Ma'am, November.

Cancelli - Cross

1
2 Q Who gave you the car?

3 A Who gave me the car?

4 Q Yes.

5 A Ralph Spero.

6 Q No --

7 A Who originally gave me the car was Ralph
8 Spero?

9 Q No, from whom did you take possession
10 of the car?

11 A Dom Spero.

12 Q Was Mr. Spero present at the time
13 you took possession of the car?

14 A Which Mr. Spero are you talking about?

15 Q I mean Mr. Ralph Spero?

16 A No.

17 Q Who was there?

18 A Just Dom Spero.

19 Q Mr. Spero was not with you on the
20 trip to Brooklyn, was he?

21 A Mr. Ralph Spero?

22 Q I'm sorry, Mr. Ralph Spero?

23 A No, Ma'am.

24 Q Where are you employed?

25 MR. WORKMIDE: I object, your Honor.

Cancelli - Cross

3218

THE COURT: Do you wish to answer
that question --

THE WITNESS: No.

THE COURT: (Continuing) -- Mr.
Cancelli?

THE WITNESS: N^o, sir.

THE COURT: Overruled. Irrelevant.
I mean objection sustained. The question
is irrelevant.

Q Could you state the circumstances
under which you came to be interviewed by Mr.
Martelli?

A Picked up --

MR. EDELBAUM: I object, your
Honor, to the form of the question.

MR. ORNSTEIN: Objection, your
Honor.

MRS. WOLFF: No further questions,
your Honor.

CROSS EXAMINATION

BY MR. ROSNER:

Q Mr. Cancelli, prior to coming into
Court today to testify, did you have any conversations
with anyone connected with the Government?

Cancelli - Cross

3219

1
2 A No, sir.

3 Q When was the last time you spoke
4 to anyone connected with the Government?

5 A Last September.

6 Q Beg pardon?

7 A Last September.

8 Q And in the course of that
9 conversation were any threats made to you by anyone
10 connected with the Government?

11 A No, sir.

12 Q Any threats made to anyone, any
13 members of your family?

14 A No, sir.

15 Q What is your occupation, Mr. Cancelli?

16 MR. ORNSTEIN: Objection.

17 Q Do you refuse to answer?

18 A Yes.

19 Q Well --

20 MR. ROSNER: I have no further
21 questions.

22 Oh, your Honor, is your Honor
23 sustaining his refusal to answer that
24 question?

25 THE COURT: The objection is sustained

Cancelli - Cross

3220

on the ground it is irrelevant.

MR. LEWIS: I have no questions, your Honor.

MR. CRAMSTEIN: NO redirect, your honor.

THE COURT: You are excused, Mr. Cancelli.

MRS. WOLFF: Your Honor, I would like to renew my motion for withdrawal of a juror and the declaration --

THE COURT: Yes.

MRS. WOLFF: (Continuing) -- of a mistrial, and furthermore I'd like that his testimony be stricken.

THE COURT: Yes. I take it all counsel wish the benefit of that motion?

MR. ROSNER: Yes, your Honor.

However, I would like to be heard somewhat further on this. If you prefer I will do it in the absence of the jury, or whatever you say.

THE COURT: Well, ^{if} we have another witness -- can you complete a witness in ten minutes?

3221

MR. WOERNER: We have another witness, your Honor. I'm not sure that he will be finished in ten minutes.

THE COURT: Is it worth trying?

MR. WOERNER: Yes, your Honor.

THE COURT: All right, let's have the witness.

MR. WOERNER: Mr. Ryan.

MR. BOSNER: Your Honor, may we approach -- does your Honor want to hear me in front of the jury ^{or} at the side bar?

THE COURT: Well, I understand the nature of your motion.

MR. BOSNER: No, you don't. I don't think you do, your Honor.

THE COURT: All right, shall we head the witness off.

We will recess now, members of the jury, until 10:00 o'clock tomorrow morning. Please do not discuss the case with one another or with anyone not on the jury until it is finally given to you to decide.

Now, I do wish that you would not read any newspapers or listen to any radio

3222

or television programs that might give you data about this trial which could confuse your recollections or introduce you to matters that have no proper place in this record.

See you tomorrow at 10:00 o'clock.

(Whereupon, the jury was excused from the Courtroom until 10:00 o'clock tomorrow morning.)

MR. EDELBAUM: Your Honor --

THE COURT: Yes, Mr. Edelbaum?

MR. EDELBAUM: (Continuing) -- I respectfully move that at this time to strike from the evidence the statement of Carmine Persico at the club as -- on the ground it in no way could be considered in any shape, manner or form as an admission that Mr. Persico knew the plates were stolen and that he had used certain stolen plates. The witness' testimony fell far short of what the Government had said to you, that it was those plates. The witness didn't say that. And I submit it was only --

THE COURT: Well, did he? I didn't --

my ear was not sharp enough to --

MR. WOERNERIDE: Your Honor, this time he used the words, "then plates."

"Then plates."

THE COURT: What did you hear?

MR. EDELBAUM: I heard "the plates," "stolen," or "plates." Like that. "The plates."

MR. WOERNERIDE: I was listening very attentatively, your Honor, and I heard him say, "then plates."

MR. EDELBAUM: Well, we have a record, your Honor. That's why we pay stenographers. So I think if we could have that read back --

Well, your Honor could reserve on that until Monday, then.

MR. WOERNERIDE: Monday?

MR. EDELBAUM: Until tomorrow.

I am all foggy today, I am not in very good shape today. Judge, with my arm paining me terribly.

But tomorrow morning we could take it up, because I would say it would be an unreasonable argument to make to the jury,

3224

because what would be more natural than even if I was there and I heard this, I would say, "That's a very stupid thing to do." I mean no inference could be drawn from that, if that's all that was said.

MRS. WOLFF: And also, your Honor, "I am sorry," is a very ambiguous remark. He could be sorry about a lot of things. He could be sorry that Mr. Cancelli came into the bar.

(Continued on next page.)

